

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 26 of 2000

with

CIVIL REVISION APPLICATION No. 28 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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GAURISANKAR SHIVLAL - DECD. THRO' HEIRS & L.R.

Versus

JASUBEN NATVARLAL JAJAL

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Appearance:

MR GM JOSHI for Petitioners

PARTY-IN-PERSON for Respondent

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CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 17/02/2000

#### COMMON ORAL JUDGEMENT

Rule. Jasuben Natvaral Jalal -party in person waives service of rule for the respondent in both the matters. Both these matters arise out of common questions of fact and law and therefore both have been heard together and disposed of by this common judgment today. I have heard Mr. G.M.Joshi, learned advocate for the petitioner and Jasuben Natwarlal Jalal Party-in-Person who is appearing for respondent.

2. Shri Gaurisankar Shivilal, since deceased through his heirs and legal representatives Nayankumar Gaurisanker Kothari and Hasmukh Gaurisanker Kothari original defendants -petitioners are the tenants, whereas Smt. Jasuben Natvarlal Jajal respondent original plaintiff is the landlord. The landlord/plaintiff has preferred a civil suit bearing H.R.P.Suit No. 1483 of 1984 for getting vacant possession of the suit property bearing No. 538 comprising of two rooms situated on the ground floor mainly on the ground that the defendants/petitioners had acquired suitable alternative accommodation for residential purpose and that the plaintiff has become entitled to recover the possession of the suit premises from the defendants. The suit was decreed by his judgment and order dt. 29th December, 1995.

3. Being aggrieved and dissatisfied with the said judgment and order dt. 29th December, 1995, original defendant tenants petitioners have preferred appeal being Appeal No.12 of 1996 under the provisions of the Bombay Rent Act before the Appellate Bench of Small Causes Court at Ahmedabad which is pending.

4. During pendency of the appeal, an application Ex.16 was filed by respondent original plaintiff for leading additional evidence to show that the defendants have acquired flat No.8-A, Hariom Co-operative Housing Society Ltd., Part III, Ratnasagar Flat. The defendants resisted the said application pointing out that it was a fresh cause of action and it has no relevance with the present controversy in appeal proceedings.

5. The application came up before Appellate Bench of Small Causes Court and Appellate Bench of Small Causes Court by its judgment and order dt. 27th December, 1999 pleased to pass following order:-

" The application Ex.16 is hereby allowed.

Following issue is framed :-

"Whether the plaintiff proves that the defendants have acquired flat no.8-A, Hariom Co.operative Housing Society Ltd. Part-III, Ratnasagar Flat, as alleged ?

6. Being aggrieved and dissatisfied with the aforesaid order dt.27-12-99 passed below Ex.16 in Appeal No.12 of 1996 passed by Appellate Bench of the Small Causes Court, original defendant applicant filed Civil

Revision Application No.26 of 2000 before this Hon'ble Court on 18th January, 2000 and this Court has issued notice and original landlord has appeared as party-in-person.

7. As regards Civil Revision Application No.28 of 2000 is concerned, the facts which are stated in above Civil Revision Application No.26 of 2000 is common and therefore, I do not repeat the same.

8. In the Civil Revision Application No.28 of 2000, the petitioner stated that as soon as application Ex.16 was filed by original plaintiff for leading additional evidence to show that defendants have acquired flat no.8-A, Hariom Co.operative Housing Society Ltd. Part-III, Ratnasagar Flat, [in which the defendants have resisted the said application]. Along with resisting the said application, the defendant during pendency of the appeal, filed another application Ex.23 for production of documents which has come in possession of the petitioners/defendants in the form the extract of property register at village Santej, Taluka Kalol, District Mehsana showing that the property bearing No. 485, 486, 487 situated in Kotharivas is in the name of Kothari Kantilal Shivram and on verification of the records, no property/building is shown in the name of Kothari Gaurisankar Shivilal. The certificate was required to be produced because of the fact that the respondent/plaintiff had produced a sale deed dated 20th June, 1928 for the purpose of proving that deceased Gaurisankar Shivilal had purchased the property in village Santej, Taluka Kalol by the said sale deed. It was contended that however he had deliberately suppressed the fact that no property was shown in the name of the deceased Gaurisankar Shivilal -father of the petitioners and therefore, it was necessary to produce before the Hon'ble Court the Certificate issued by the Talati-cum-Mantri of the village in respect of the said property.

9. It was stated by the original defendant/petitioner herein that application Ex.16 which is subject matter of Civil Revision Application No.26 of 2000 as well as Ex.23 which is subject matter of Civil Revision Application No.28 of 2000 came up before the Appellate Bench of the Small Causes Court and as stated earlier, so far as additional issue was concerned, Appellate Bench has passed order on 27th December, 1999 as stated above. However as regards Ex.23 is concerned, when the matter reached hearing before Appellate Bench of Small Causes Court on the same date, the Appellate Bench

has passed the following order:-

" Ex.23 is hereby rejected."

10. Being aggrieved by the said order dt.27th December, 1999, wherein the Appellate Bench, Small Causes Court was pleased to reject application Ex.23 of the original defendant petitioner, the petitioner filed Civil Revision Application No.28 of 2000 and that is how two revision applications have come up before this Court which I have heard together as majority of the facts are common in question.

11. As regards Civil Revision Application No.26 of 2000 is concerned, I do not find any substance in the matter because the learned Appellate Judge has framed additional issue and has also remanded the matter to the trial court for deciding the said issue after giving an opportunity to both the parties and decide the same within three months from the date of receipt of order of this court.

12. As the Appellate Bench of Small Causes Court has rejected the said application by his order dt. 27th December, 1999 on the ground that "if the affidavit produced with the application is perused, it is clear that intention of the appellant has to fill in the gap and it is not the case that this document was not available when the evidence was recorded. So simply because this document is termed Government record, is no ground to allow production at this late stage in appeal. The learned Appellate Judge further observed that one of the two documents is not government record. It purports to be a certificate issued by Talati-cum-Mantri. Such certificate cannot become a document. Other is xerox copy of Form No.9 and it is not the case that it was not available at the time of evidence, and thereby, rejected the said application Ex.23.

13. However as regards Civil Revision Application No.28 of 2000 is concerned, learned advocate for the petitioner submitted that the learned Appellate Judge has mainly erred in rejecting application Ex.23 for production of documents inspite of the fact that it was an extract of a Government records which would prove that the property situated in village Santej, Taluka Kalol neither belong to deceased defendant nor did it stand in the name of deceased defendant on the record. It was further submitted that the learned Judge of Appellate Bench ought to have appreciated that it was necessary to controvert the case of the respondent/plaintiff and the

certificate issued by the Officer of the Gram Panchayat was a relevant document for that purpose as it was issued in the year 1999. It was further submitted by the learned advocate Mr. Joshi that the Appellate Bench ought to have appreciated that the decree was passed against the defendant on the ground that the defendant acquired suitable alternative accommodation and therefore it was necessary and in the interest of justice to prove that the property did not belong to the defendants nor did it stand in the name of deceased defendant (father of the present defendants) on the record, and therefore, ought to have granted the application, Ex.23.

14. Learned advocate for the appellant, from the records of Civil Revision Application No.26 of 2000 pointed that when the Appellate Bench has allowed the application Ex.16 filed by the original plaintiff and directed that additional issue may be considered by the learned trial Judge of the Small Causes Court. It is incumbent upon the Appellate Bench to allow the application Ex. 23 filed by the original defendant which is in the nature of evidence to produce in order to controvert the case of the plaintiff, and therefore, the learned Appellate Bench has mainly erred in rejecting the application Ex.23. The learned advocate for the appellant further submitted that both the orders are in contradictory in terms. The respondent who was party in possession could not controvert aforesaid submission of the learned Advocate Mr.Joshi.

15. I find considerable force in the arguments advanced by Mr. Joshi in connection with Civil Revision Application No. 28 of 2000 and in my opinion, the learned Appellate Bench has mainly erred in rejecting the application Ex.23 filed by the original defendant. When it has already allowed application Ex.16 regarding additional issue, the learned Appellate Judge ought to have allowed the application Ex.23 filed by the original plaintiff. In view of the same, the following order is passed :-

#### ORDER

16. As regards Civil Revision Application No.26 of 2000, I dismiss the same confirming the order passed by the Appellate Bench of Small Causes Court dt. 27th December, 1999 raising additional issue. Rule is discharged, with no order as to costs.

17. However as regards Civil Revision Application

No.28 of 2000, I quash and set aside the order passed by the Appellate Bench, dated 27th December, 1999. Accordingly, this Civil Revision Application is allowed. Rule is made absolute, with no order as to costs.

Date: 17/2/2000. ----

ccshah